



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2143

Appeal PA-020279-1

Ministry of Natural Resources



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a letter sent by a named Ministry Conservation Officer to a specified individual (the affected person) on June 23, 1993. The Ministry located the requested letter and contacted the affected person, seeking his views on its disclosure to the appellant, in accordance with section 28(1)(b) of the *Act*.

The affected person declined to consent to the disclosure of the record to the requester. The Ministry then advised the requester that it was denying access to the record, in its entirety, pursuant to the invasion of privacy exemption in section 21(1) of the *Act*. The requester, now the appellant, appealed the Ministry's decision.

Mediation of the appeal was not successful and the matter was moved to the Inquiry stage of the appeals process.

I decided to seek the representations of the Ministry and the affected person initially, as they bear the onus of demonstrating the application of the exemption claimed. The affected person did not provide representations in response to the Notice. The Ministry made representations and I sent a copy of the Notice and the non-confidential portions of the Ministry's submissions to the appellant. The appellant also made submissions in response to the Notice.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

The section 21(1) personal privacy exemption applies only to information which qualifies as "personal information", as defined in section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including the address of the individual [paragraph (d)] and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual [paragraph (h)].

In support of its contention that the record contains the personal information of the affected person, the Ministry relies on the finding of Commissioner Ann Cavoukian in Privacy Investigation I94-011P. In that decision, the Commissioner determined that information relating to an individual's use and future plans for certain mining lands qualified as the personal information of that individual under section 2(1). The Ministry indicates that the record at issue contains information relating to proposed plans for the use of his land by the affected person. Accordingly, it submits that this information qualifies as the personal information of the affected person.

The appellant submits that the information contained in the record is not personal information. He is of the view that the record is similar to a letter dated June 23, 1993 sent to him by the same Ministry official. As a result, the appellant argues that the letter "should be classed as public information".

I have reviewed the contents of the record and find that it includes the affected person's address and his name, along with additional personal information relating to his use of certain property which he owns. As a result, I find that the information contained in the record qualifies as the personal information of the affected person within the meaning of section 2(1).

Where a requester seeks access to records which contain only the personal information of other individuals, section 21(1) of the *Act* prohibits the disclosure of this information except in certain circumstances. Section 21(1)(f), which is particularly relevant here, states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(f) is an exception to the section 21(1) prohibition against the disclosure of personal information. In order to establish that section 21(1)(f) applies, it must be shown that disclosure of the personal information at issue would **not** constitute an unjustified invasion of personal privacy (Order MO-1212).

In applying section 21(1)(f), sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the Ministry to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 21 exemption (See: Order PO-1764).

If none of the presumptions in section 21(3) applies, the Ministry must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

The Ministry has made confidential representations on the application of the "presumed unjustified invasion of personal privacy" in section 21(3)(b) of the *Act*. I am unable to describe the nature of those submissions in this order. Based on my review of the circumstances surrounding the creation of the record, I find that the personal information contained therein was

not compiled and is not identifiable as part of an investigation into a possible violation of law. The Ministry official who prepared the record was attempting to mediate a dispute between the affected person and a number of cottage owners, including the appellant, whose lands were allegedly being adversely affected by the activities of the affected person. Contrary to the submissions of the Ministry, these efforts on the part of the Ministry's Conservation Officer did not include any "law enforcement" component and did not form part of a law enforcement investigation on the part of the Officer. As a result, I find that the presumption in section 21(3)(b) has no application to the present appeal.

The Ministry has not made reference to any of the considerations listed in section 21(2) that favour the non-disclosure of the personal information contained in the record. As noted above, the affected person did not respond to the Notice provided to him.

The appellant argues that the factors listed in sections 21(2)(a) and (d) apply in this appeal. He submits that, in his view, the Ministry has treated the cottagers, including himself, unfairly and the disclosure of the record will assist in subjecting the activities of the Ministry to public scrutiny. The appellant believes that the affected person has constructed a dam without obtaining a permit or conducting an environmental assessment and that the Ministry has not taken steps to prevent this from occurring. In addition, the appellant takes the position that the disclosure of the record will enable him to determine whether the Ministry informed the affected person that the building of a "control structure" would not be permitted. The appellant concludes this portion of his submissions by arguing that the disclosure of the record is desirable for the purpose of subjecting the activities of the Ministry to public scrutiny, as contemplated by section 21(2)(a).

The appellant has provided me with a number of documents which describe a long-standing dispute between cottage owners and the affected person respecting the outflow of water from a local lake. The cottage owners association has sought the assistance of the Ministry and the Rideau Valley Conservation Authority in resolving this matter and it has been suggested that a civil action to enforce their riparian rights may be necessary. The appellant takes the position that he requires access to the record at issue because the personal information in the record is relevant to a fair determination of his rights under section 21(2)(d).

The subject matter of the dispute between the affected person and the cottage owners, including the appellant, has been on-going for a number of years. The record at issue was written by Ministry staff nearly ten years ago and describes the author's efforts to answer the affected person's concerns regarding a solution to this situation. In my view, because of the contents of the record, its disclosure will not assist the appellant in subjecting the activities of the Ministry to public scrutiny under section 21(2)(a).

Similarly, the personal information of the affected person which is contained in the record will not assist and is not relevant to a fair determination of the appellant's rights under section 21(2)(d). In order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[See Orders P-312 [upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)] and PO-1764]

I have not been provided with sufficient evidence to indicate that the appellant or the cottager's association has undertaken or is contemplating any legal proceedings to enforce their riparian rights. Further, I find that the personal information contained in the record has only tangential relevance to the determination of any legal right the appellant may have against the affected person. In my view, the appellant has not provided me with sufficient information to allow me to make a finding that section 21(2)(d) applies in the present appeal.

As a result, I find that none of the factors favouring the disclosure of the personal information contained in the record are present in this appeal. Accordingly, I find that there is no basis to conclude that the disclosure of the record would not constitute an unjustified invasion of personal privacy. I find, therefore, that the exemption in section 21(1) applies to the information in the record and that it is exempt from disclosure.

ORDER:

I uphold the Ministry's decision to deny access to the record.

Original signed by: _____
Donald Hale
Adjudicator

_____ May 8, 2003